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GOVERNMENT GAZETTE

BOLETIM OFICIAL

SUPPLEMENT

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Secretariat

Legislative Assembly of Goa, Daman and Diu

Legislature Department

LA/2860/65

The following Report of the Select Committee on Bill no. 16 of 1965 (The Goa, Daman and Diu Civil Courts Bill, 1965) along with the Bill as amended by the Select Committee which was presented to the Legislative Assembly of Goa, Daman and Diu, on the 6th August 1965 is hereby published for general information in pursuance of the provisions of rule 260 of the Assembly Rules.

Bill No. 16 of 1965

A BILL

To provide for the constitution and organisation of a District Court and subordinate Civil Courts in the Union Territory of Goa, Daman and Diu

COMPOSITION OF THE SELECT COMMITTEE

1. Shri Tony Fernandes, Minister for Law, Labour, Industries and Agriculture—Minister-in-Charge (Chairman)
2. Dr. A. de Loyola Furtado, M. L. A.
3. Shri J. L. G. Araujo, M. L. A.
4. Shri Enio Pimenta, M. L. A.
5. Shri Jaysingrao V. Rane, M. L. A.
6. Shri Dattaram Chopdenkar, M. L. A.
7. Shri Vijay Kamulkar, M. L. A.
8. Shri M. R. Jivani, M. L. A.

SECRETARIAT

1. Shri P. B. Venkatasubramanian, Secretary Law and Legislature.
2. Shri R. V. Oroskar, Under Secretary, Legislature Department.

Draftsman

1. Shri Kanta Desai, Under Secretary, Law Department.

REPORT OF THE SELECT COMMITTEE

1. I, the Chairman of the Select Committee to which Bill No. 16 of 1965 (a Bill to provide for the constitution and organisation of a District Court and Subordinate Civil Courts in the Union Territory of Goa, Daman and Diu) was referred, having been authorised by the Committee to submit the report on their behalf present this Report with the Bill as amended by the Committee annexed thereto.

2. The Bill was published under rule 117 in Government Gazette dated the 23rd July 1965. It was introduced in the Legislative Assembly on 28th July, 1965 and was referred to the Select Committee on the same day.

3. The Committee held three sittings on the 30th and 31st July and on 2nd August, 1965, respectively.

4. During the sitting on the 2nd August, 1965, the Committee heard Shri V. S. Kaisare, Advocate of Panjim. The Committee gave due consideration to the views of this learned and experienced advocate.

5. The Committee did not consider it necessary to recommend any changes in the Bill except in clauses 3 and 7. The observations of the Committee on these two clauses are as follows.

6. *Clause 3* — This clause provides for the constitution of a District Court presided over by a District Judge and empowers the Administrator to alter the limits of the District or create new Districts. Firstly, the Committee felt that there was a lacuna in the first part of the clause in as much as the authority who is to appoint the District Judge was not specified. This lacuna is sought to be removed by inserting words «and appointed by the Administrator» after the words «District Judge» in line 3 of the clause.

Secondly the Committee felt that it would be in keeping with the independence of judiciary that the Administrator should consult the High Court before he alters the limits of the District or creates new Districts. It therefore recommends that this part of the clause be amended in order to secure this object by adding the words «in consultation with the High Court» at the end of the clause.

7. *Clause 7 — Sub-clause (1)* — This Sub-clause *inter-alia* provides that it shall be the duty of the District Judge to cause one of his assistants to inspect the proceedings of all Subordinate Courts and to give such directions to them with respect to matters not provided for by law as he may think necessary. The Committee felt that although the Assistant District Judge may inspect the Subordinate Courts he should not be empowered to give directions to them. Such directions, if any, should be given only by the District Judge or the Additional District Judge after the courts are inspected by the Assistant Judge. The Committee, therefore, recommends that the sub-section be amended to achieve this purpose, providing specifically that only the District Judge or the Additional District Judge can issue the directions.

8. In the opinion of the Committee no other changes are called for in the Bill.

ASSEMBLY HALL

TONY FERNANDES

Panjim, August 6, 1965

Chairman

MINUTES OF DISSENT

I

Joint minute of dissent by Dr. A. de Loyola Furtado, M. L. A.
and
Shri J. L. G. Araujo M. L. A.

Article 50 of the Constitution states explicitly that the state shall take steps to separate the Judiciary from the executive in the public services of the State. Though the provisions in Part IV of the Constitution (Directive Principles of State Policy) are not justiciable, Article 37 lays down that the principles laid down in those provisions are nevertheless fundamental in the Governance of the Country and it shall be the duty of the State to apply these principles in making law.

The organization of judicial services in the Union Territory under the Portuguese regime was such that there was separation of judiciary from executive.

The set-up proposed to be introduced in this Bill though prevalent in the rest of India, is far from satisfactory. In order to evolve a new system in matters of procedure the Select Committee ought to

have had some breathing time to give its report adapting the old procedure to the new or vice-versa. The very fact that the relatively voluminous *Report on Civil Procedure Code* prepared by the local Law Commission was made available to members actually during the discussion of the clauses of the Bill (hardly two or three sittings) is sufficient indication of the post-haste methods of work, incompatible with the seriousness of the task of the Select Committee.

Article 233 and the following of the Constitution of India detail certain norms to be adhered to. In sections 9, 10, 14, and 16 of the Bill the appointments and the investiture of powers have to follow the norms laid down in the Constitution, that is, *on proposal of or after consultation with the High Court* as the case may be. It is not redundancy to say so in so many words, in respective Sections, what is already laid down in the Law of Laws. Explicit mention of the conditions laid down by the Constitution would minimize the possibility of violation of the Constitution and its principles.

Haste makes waste. If one of the reasons alleged for the introduction of the Civil Courts Bill in this Union Territory is that the previous procedure was elaborate and cumbersome (justice delayed is justice denied) hustling through decisions (even at the law-making stage, as in the present instance) is no less to be deprecated.

A. DE LOYOLA FURTADO, M.L.A.

J. L. G. ARAUJO, M.L.A.

II

Minute of dissent by Shri Enio Pimenta, M. L. A.

The Bill suffers basically from a fundamental error in so far as most of its provisions ride roughshod over the rights of the High Court and constitute an affront to the Judiciary. The Bill as it is drafted constitutes an unabashed and unalloyed interference into and infringement of the sacred rights and independence of the Judiciary by the Executive.

The Bill contains a number of provisions in flagrant contravention of the Indian Constitution, namely Articles 233, 234, 235, 227 & 230 and the Judicial Commissioner's Court Regulation, 1963. Obviously the Administrator cannot appoint the District Judge and other Judges without consulting the High Court. In fact it blatantly contravenes the spirit behind Article 230 (b) of the Constitution.

It is most regrettable that sufficient time was not available to the Select Committee in as much as the detailed examination of 36 clauses was hustled through in just two sittings with hardly 5 hours devoted to it, whereby adequate justice could not be done to such an important piece of Legislation.

I am afraid the Bill does not take into account the independence of the Judiciary in terms of the policy of separation of powers between the Executive and the Judiciary.

How pathetic indeed that the High Court comes in the picture for the appointment of petition writers and for making rules but has no say in the appointment of Judges thereby leading to insubordination.

ENIO PIMENTA, M.L.A.

[NOTE. — Deletion made by the Select Committee are shown in square brackets and additions are underlined].

The Goa, Daman and Diu Civil Courts Bill, 1965

(Bill No. 16 of 1965)

(As amended by the Select Committee)

A Bill to provide for the constitution and organisation of a District Court and subordinate Civil Courts in the Union Territory of Goa, Daman and Diu.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Sixteenth Year of the Republic of India as follows:

1. Short title, extent and commencement. — (1) This Act may be called the Goa, Daman and Diu Civil Courts Act, 1965.

(2) It extends to the whole of the Union Territory of Goa, Daman and Diu.

(3) It shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint.

2. Definitions. — In this Act, unless the context otherwise requires:

(a) «Administrator» means the Administrator of Goa, Daman and Diu, appointed under Article 239 of the Constitution.

(b) «High Court» means the Judicial Commissioner's Court constituted by the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963.

(c) «Official Gazette» means the Goa, Daman and Diu Government Gazette.

(d) «Union Territory» means the Union Territory of Goa, Daman and Diu.

PART II

District Court

3. District Court. — There shall be a District Court for the whole of the Union Territory, presided over by a Judge to be called the District Judge and appointed by the Administrator but the Administrator may from time to time by notification in the Official Gazette, alter the limits of the District or create new Districts for the purposes of this Act, in consultation with the High Court.

4. Situation of District Court. — The District Judge shall ordinarily hold the District Court at Panjim, but may, with the previous sanction of the High Court, hold it elsewhere within the Union Territory.

5. Original jurisdiction of District Court. — The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure, 1908 or any other law for the time being in force.

6. Appellate jurisdiction of District Court. — Save as otherwise expressly provided in this Act, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

7. Control and inspection of Courts. — (1) Subject to the provisions contained in the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 and the rules made thereunder, the District Judge shall have general control over all the Civil Courts subordinate to the District Court and their establishment and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all such Courts. [and to] Thereafter the District Judge or an Additional District Judge may give such direction with respect to matters not provided for by law as he may think necessary.

(2) The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

8. Writs and Orders. — (1) The District Judge shall obey all writs, orders or processes issued to him by the High Court and shall make such returns or reports thereto under his signature and the seal of the Court as the exigencies of the case require.

(2) He shall further furnish such reports and returns and copies of proceedings as may be called for by the High Court or the Administrator.

9. Additional District Judges. — The Administrator may appoint one or more Additional Judges to the District Court who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that an Additional District Judge shall not keep a file of civil suits or appeals and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to him by order of the High Court.

10. Assistant Judges. — The Administrator may appoint one or more Assistant Judges to assist the District Judge.

11. Situation of Assistant Judge's Court. — An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere if the Administrator, in consultation with the High Court, so directs.

12. Original jurisdiction of Assistant Judge. — (1) The District Judge may refer to any Assistant Judge original suits applications or references under Special Acts and miscellaneous applications.

(2) The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications or references as are referred to him by the District Judge under sub-section (1).

(3) Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge if the amount of value of the subject matter does not exceed ten thousand rupees and to the High Court in other cases.

13. Appellate jurisdiction of Assistant Judge. — (1) An Assistant Judge shall have jurisdiction to try such appeals from the decrees and orders of the subordinate courts as would lie to the District Judge and as may be referred by him to the Assistant Judge.

(2) Decrees and orders passed under this section by an Assistant Judge shall have the same force and shall be subject to the same rules as regards procedure and appeals as decrees and orders passed by the District Judge.

14. Assistant Judge with powers of District Judge.

(1) The Administrator may by notification in the Official Gazette invest an Assistant Judge with all or any of the powers of a district Judge within a particular part of a District and may, by notification from time to time determine or alter the limits of such part.

(2) The jurisdiction of an Assistant Judge so invested shall pro tanto exclude the jurisdiction of the District Judge from within the said limits.

(3) Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Administrator, but may, with the previous sanction of the High Court hold it at any other place within such limits.

PART III Civil Judges

15. **Number of subordinate Civil Courts.**—There shall be so many Civil Courts subordinate to the District Court as the Administrator may, from time to time direct.

16. **Appointment of Civil Judges.**—The Judges of such Subordinate Courts shall be appointed by the Administrator and shall be called Civil Judges.

17. **Local limits of jurisdiction of Civil Judges.**—The Administrator, may by notification in the Official Gazette, fix, and by a like notification, from time to time, alter the local limits of the ordinary jurisdiction of the Civil Judges.

18. **Situation of subordinate Courts.**—(1) The Civil Judges shall hold their Courts at such place or places as the Administrator may, from time to time appoint within the local limits of their respective jurisdictions:

Provided that for special reasons it shall be lawful for the Administrator to order that a Civil Judge shall hold his Court at a place outside the local limits of his jurisdiction

(2) Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Civil Judge shall hold his court at each of such places, and the Civil Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

(3) The same person may be the Judge of more than one subordinate Court and may dispose of the Civil business of any one of his Courts at the headquarters of any other of his Courts, and in such cases the District Judge shall, subject to the control of the High Court prescribe rules for regulating the time during which the Civil Judge shall sit in each Court.

19. **Additional Civil Judges.**—(1) For the purposes of assisting the Judge of any subordinate Court in the disposal of the Civil business on his file, the Administrator may appoint to such Court one or more additional Civil Judges. An Additional Civil Judge shall dispose of such civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by the Civil Judge of such Court.

(2) For the purpose of this section the provisions of this Act applicable to Civil Judges shall be, applicable to additional Civil Judges.

20. Classes of Civil Judges and their jurisdiction.—

(1) The Civil Judges shall be of two classes, namely Senior Civil Judges and Junior Civil Judges.

(2) The jurisdiction of a Senior Civil Judge extends to all original suits and proceedings of a Civil nature.

(3) The jurisdiction of a Junior Civil Judge extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value ten thousand rupees:

Provided that the Administrator may increase the limit of ten thousand rupees to fifteen thousand rupees in the case of any Junior Civil Judge of not less than ten years standing and specially recommended in this behalf by the High Court. A Civil Judge so empowered shall continue to exercise this power so long and as often as he may fill the office of a Junior Civil Judge without reference to the place in which he may be employed unless the powers are withdrawn by the Administrator.

21. **Local limits of jurisdiction.**—(1) The local limits of the jurisdiction of every Civil Judge, Senior or Junior, shall be such as may from time to time be fixed by the administrator, by notification in the Official Gazette.

(2) A Senior Civil Judge in addition to his ordinary jurisdiction, shall have and exercise jurisdiction in respect of such suits and proceedings of a civil nature as may arise within the local jurisdiction of such Courts presided over by a Junior Civil Judge as may be specified by the Administrator by notification in the Official Gazette, and wherein the subject matter exceeds the pecuniary jurisdiction of the Junior Civil Judge as defined in the preceding section.

22. **Appeals from his decision.**—In all suits decided by a Civil Judge of which the amount or value of the subject matters exceeds ten thousand rupees the appeal from his decision shall be direct to the High Court.

23. **Appellate jurisdiction of Civil Judge.**—(1) The Administrator may invest any Senior Civil Judge with power to hear appeals from such decrees and orders of a Junior Civil Judge as may be referred to him by the District Judge.

(2) Decrees and orders so passed in appeal by a Senior Civil Judge, shall have the same force as if passed by a District Judge.

(3) A Senior Civil Judge, on whom the power of hearing appeals has once been conferred under this section shall continue to have this power so long and so often as he may fill the office of senior Civil Judge, without reference to the place in which he may be employed:

Provided that the Administrator may by notification in the Official Gazette at any time withdraw such power.

24. **Power to invest Civil Judges with small cause powers.**—(1) The High Court may invest any Civil Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such courts

up to such amount as it may deem proper, not exceeding in the case of a Senior Civil Judge one thousand and five hundred rupees and in the case of Junior Civil Judge five hundred rupees.

(2) A Senior Civil Judge or a Junior Civil Judge who is invested with the jurisdiction of a Court of Small Causes under sub-section (1) shall continue to have such jurisdiction so long and as often as he may fill the office of Senior Civil Judge or Junior Civil Judge as the case may be, without reference to the place in which he may be employed.

(3) The High Court may, whenever it thinks fit, withdraw such jurisdiction from any Civil Judge so invested.

25. Power to invest Civil Judges with jurisdiction under special law. — (1) The Administrator may by general or special order invest any Civil Judge, within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under any special law.

(2) Every order made by a Civil Judge by virtue of the powers conferred upon him under sub-section (1) shall be subject to appeal to the High Court or the District Court according as the amount or value of the subject matter exceeds or does not exceed ten thousand rupees.

(3) Every order of the District Judge passed on appeal under sub-section (2) from the order of a Civil Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees.

PART IV

Miscellaneous

26. Suits in which Government is a party. — (1) No Court other than the District Court shall receive or register any suit in which the Central Government or the Administrator or the Government of Goa, Daman and Diu or any officer of Government in his official capacity, is a party:

Provided that the Administrator may by general or special order notified in the Official Gazette, direct that the provisions of this section shall not apply to any suit or class or category of suits of the nature referred to therein.

(2) Nothing in this section shall be deemed to apply to a suit against the administration of a Government Railway.

27. Seal. — (1) The District Judge shall use a circular seal, in 050.8 metres in diameter, which shall bear thereon the Asoka Capital Motif with the following inscription in Hindi and English —

«District Court of Goa, Daman and Diu».

(2) Every additional District Judge and Assistant Judge shall use the seal of the District Judge.

(3) Each Civil Judge shall use a circular seal one inch and a half in diameter, bearing the Asoka Capital Motif with the following inscription in English and in Hindi —

«Civil Judge of».

28. Temporary vacancy of Judges. — (1) In the event of the District Judge being prevented from

performing his duties by illness or other casualty, or of his absence from his district on leave, or of his death, the Seniormost Additional District Judge if any, or in his absence, the Seniormost Assistant Judge if any or the Seniormost Civil Judge shall assume charge of the District Court without interruption to his ordinary jurisdiction, and while so in charge shall perform the duties of a District Judge with respect to the filling of suits and appeals, receiving pleadings, execution of processes, return of writs and the like and shall be designated Additional District Judge, Assistant Judge or Civil Judge as the case may be, in charge of the district and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

(2) In the event of the death, suspension or temporary absence of any Civil Judge, the District Judge may empower the Judge of any other subordinate Court to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct.

29. Delegation of powers of District Judge. — Any District Judge leaving the station and proceeding on duty to any place within his district may delegate to an Additional District Judge, if any, or the Assistant Judge, or in the absence of an Assistant Judge to a Civil Judge at the station, the power of performing such of the duties enumerated in the preceding section as may be emergent; and such officer shall be designated Additional District Judge, Assistant or Civil Judge, as the case may be, in charge of the station.

30. Ministerial Officers. — (1) The duties and designations of the ministerial officers of the Civil Courts shall be regulated by such rules as the High Court may from time to time prescribe.

(2) There may be appointed to any Civil Court under this Act a clerk of the Court, who in addition to such duties as may from time to time be prescribed by the High Court may receive and register plaints, and shall refer such as he may consider should be refused for the orders of the Judge of the Court, and may sign all processes, and authenticate copies of papers.

31. Rules for keeping proceedings. — The proceedings of each Civil Court shall be kept and recorded according to such rules as the High Court may from time to time prescribe. The High Court shall also lay down rules under which copies of papers may be granted.

32. Petition writers. — (1) The High Court may, from time to time make rules consistent with this Act and any other enactment for the time being in force: —

(a) declaring what persons shall be permitted to act as petition-writers in the Courts subordinate to it;

(b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them; and

(c) providing a penalty of fine not exceeding fifty rupees for the breach of any of the rules so made and determining the authority by which such brea-

ches of the rules shall be investigated, the penalties imposed, and the procedure to be followed by such authority.

" (2) Every fine imposed under clause (c) of subsection (1) shall be recoverable as if it were a fine imposed by a Magistrate in the exercise of his ordinary jurisdiction.

33. Sittings of Courts.—The District and Subordinate Courts shall sit from day to day except on closed holidays notified by the High Court under section 21 of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation 1963.

34. Repeal and savings.—As from the commencement of this Act, any law in force in the Union Territory making provisions for the constitution and organisation of Civil Courts, or any part of such law, shall stand repealed.

(1) Notwithstanding anything contained in the foregoing provisions:—

- (a) the constitution and organisation of Courts under this Act shall not prejudicially affect the continued operation of any notice served, injunction issued, direction made or proceedings taken before the commencement of this Act by any court under the powers conferred upon it by any law for the time being in force;
- (b) every proceedings pending before a court of comarca immediately before the commencement of this Act shall, on such commencement, stand transferred to the corresponding court of Senior Civil Judge;

- (c) every proceeding pending before any court of Julgado immediately before the commencement of this Act shall, on such commencement, stand transferred to the corresponding court of Junior Civil Judge; and
- (d) every decree or order made or sentence passed by a court of Comarca or a Court of Julgado shall be deemed for the purpose of execution to have been made or passed by the corresponding court of Senior Civil Judge or Junior Civil Judge, as the case may be.

Explanation:—In this section the expression «corresponding court» means the court specified as such by order of the Administrator published in the Official Gazette.

35. Rule of construction.—Any reference in any law in force in the Union Territory to the Court of Comarca or to the Court of Julgado or to the Judge thereof, shall be construed as a reference respectively to the Court of Senior Civil Judge and the Court of Junior Civil Judge, or to the Judge thereto.

36. Removal of difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Administrator may, by order, published in the Official Gazette, make such provisions or give such directions (not inconsistent with the provisions of this Act) as may appear to him to be necessary for the removal of the difficulty.

ASSEMBLY HALL, P. B. VENKATASUBRAMANIAN
Panjim, Secretary to the Legislative Assembly
August 6, 1965 of Goa, Daman and Diu.